

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4742 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

TRILOKESH RASIKLAL KADIYA

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR RAVAL, APP, for Respondent No. 1

MR BUDHBHATTI for respondent No.3.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/08/1999

ORAL JUDGEMENT

1. Heard Mr. Tirmizi, learned advocate for the petitioner, Mr. Raval, learned Additional Public Prosecutor for respondents No.1 and 2 and Mr. Budhbhatti, learned advocate for respondent No.3.
2. Rule. Mr. Raval waives service of Rule on behalf of respondents No.1 and 2 and Mr. Budhbhatti

waives service for respondent No.3. By consent, the matter is taken up today for hearing.

3. The petitioner herein challenges the order of learned Judicial Magistrate, First Class, Gandhinagar, passed on 25th June, 1999, relating to the interim custody of muddamal Maruti Van No.GH-1-HH 8718 sought by the petitioner under Section 451 of Code of Criminal Procedure. The vehicle is involved in a prohibition offence and, therefore, the learned Trial Magistrate rejected the application.

4. Mr. Tirmizi submitted that the petitioner is the registered owner of the vehicle in question. He is not involved in the offence. It was only on this occasion that he lent the vehicle and it is allegedly used in commission of the offence and, therefore, his interest may not be jeopardized. If the vehicle is not given, it would, ultimately, get rusted and would cause damage to the interest of the petitioner.

5. Mr. Budhbhatti appearing for respondent No.3-original accused from whom the vehicle is seized has no objection if the vehicle is given to the petitioner. Mr. Raval, learned Additional Public Prosecutor opposes this application. He stated that the vehicle is used in an offence under prohibition Act which is an offence against the society and, therefore, the vehicle may not be released.

6. Considering the rival side contentions and in light of the papers on record, it is amply clear that the vehicle is allegedly used in a prohibition offence. At the same time, the petitioner, who is the registered owner, is not involved in the offence. It is true that the vehicle is used in commission of an offence. But, at the same time, the trial is likely to take time and the owner may not be made to suffer loss if the vehicle is kept in custody till the trial is over. This Court is, therefore, inclined to entertain this application. The vehicle is directed to be handed over to the petitioner pending the trial on his furnishing a bond and a surety of Rs.1 lakh, on following conditions:-

- (i) that the petitioner shall keep the vehicle in good condition;
- (ii) that the petitioner shall not sell or transfer the vehicle in any manner without permission of the trial Court;

(iii) that the petitioner shall ensure that the vehicle
does not get involved in any illegal activity;
and

(iv) the petitioner shall produce the vehicle either
before the investigating agency or before the
Court whenever he is asked so to do.

7. Rule is made absolute accordingly.

[A.L. DAVE, J.]

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